intentionally."[26] To be sure, interpreted thus, the word "accidentally" adds nothing to the meaning of the phrase, since the employer incurs no liability for injuries intentionally inflicted by an employee upon himself. But the language does not unambiguously narrow the peril to what would be an "accident" in personal accident insurance, and being capable of two fair constructions, should be construed in favor of the insured.[27]

THE DOCTRINE OF CLAFLIN *v.* CLAFLIN. — In a recent case the court, feeling itself bound by the *dictum* in *Nichols* v. *Eaton*,[1] adopted the doctrine of *Claflin* v. *Claflin*,[2] and permitted the testatrix to provide for the postponement of the enjoyment of a present vested gift until four years after the majority of the legatee. *King* v. *Shelton*, 38 Wash. L. R. 714 (D. C., Ct. App., Nov. 2, 1910). The doctrine enunciated in the principal case has been much criticized. In the first place, it is said that it tends to infringe upon the rule against perpetuities; but this is not so, for that rule determines the time within which interests must vest, but does not govern the postponement of enjoyment, the propriety of which is properly considered in connection with the doctrine of restraints on alienation.[3]

In England it is well settled that when one is entitled absolutely to property, any direction postponing its transfer or payment to him is void, on the ground that it is contrary to public policy that a man having the entire interest in property should be restrained in the use or disposition of it.[4] But an exception has been made in the case of married women, for whose benefit during coverture a restraint is allowed even upon an estate in fee simple.[5]

In many of the United States the strict English rule has been departed from, and restraints in the form of spendthrift trusts have been allowed.[6] The doctrine of the main case permitting a further restraint on alienation has not been widely accepted, but has become firmly established in Massachusetts[7] and Illinois,[8] and has been recognized in the federal courts.[9]

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[26] See WEBSTER'S DICTIONARY.

[27] This general principle of construction has been recognized in employers' liability insurance, as well as other branches. See Columbia, etc. Co. *v.* Fidelity and Casualty Co., *supra*, 167; Cornell *v.* Travelers' Ins. Co., 66 N. Y. App. Div. 559, 562. But the full argument advanced in the text above has not been mentioned in any case. The principal case merely followed the English decisions under the Workmen's Compensation Act, and in Columbia, etc. Co. *v.* Fidelity and Casualty Co., *supra*, the court intimated its disapproval of the accident insurance cases barring disease. See Columbia, etc. Co. *v.* Fidelity and Casualty Co., *supra*, 172, 173.

[1] 91 U. S. 716, 725.

[2] 149 Mass. 19.

[3] Armstrong *v.* Barber, 239 Ill. 389, 397.

[4] The rule is equally applicable whether the gift is to a natural person, Saunders *v.* Vautier, 4 Beav. 115; s. c. Cr. & Ph. 240; or a charity, Wharton *v.* Masterman, [1895] A. C. 186.

[5] Baggett *v.* Meux, 1 Phil. 627.

[6] See GRAY, RESTRAINTS ON ALIENATION, 2 ed., § 177 *a*.

[7] See Dunn *v.* Dobson, 198 Mass. 142, 146.

[8] Lunt *v.* Lunt, 108 Ill. 307; Wagner *v.* Wagner, 244 Ill. 101.

[9] Stier *v.* Nashville Trust Co., 158 Fed. 601 (*per* Lurton, J.). Some jurisdictions

Is the doctrine defensible on principle? It is clear that the testator's duly expressed intent to create this result must be carried out unless so doing would disregard some principle of law or public policy. The question then becomes: is there such a rule of policy interposed here? The whole tendency of the law has been toward the removal of old restraints on alienation, and the disallowance of new ones.[10] The only retrogressive movement has been the confirmation of spendthrift trusts, and these are opposed to the fundamental principle of the common law that it is against public policy that a man "should have an estate to live on but not an estate to pay debts with." [11] *Claflin* v. *Claflin* marks a second reactionary step; hence its supporters must justify its departure from the general rule. Where the doctrine has been adopted, the courts have admitted that the interest of the legatee remains alienable.[12] If a creditor or transferee of the *cestui's* interest is permitted to gain possession of the property forthwith, the restraint is purely formal, since the legatee can get possession by the simple process of assigning and accepting a reassignment. But if the restriction is strictly enforced, a disposition of the property at a fair valuation becomes more difficult, thus exposing the legatee to those one-sided bargains which the testator sought to prevent, and against which equity has always sought to protect *cestuis*.[13] It is admitted by advocates of the rule [14] that some limit must be placed upon the duration of the postponement, but no satisfactory limitation has as yet been evolved by the courts.[15] The adoption of any rule governing the duration will mark the introduction of a new confusing element into a branch of the law already overburdened with an inheritance of technicalities. It is submitted, therefore, that this exception, which neither affords any particular advantage, nor corrects a preëxisting defect in the law, but tends only to confusion, should be rejected.

CAN A STATE ABOLISH INSANITY AS A DEFENSE IN CRIMINAL PROSECUTIONS. — The Supreme Court of the State of Washington, in the recent case of *State* v. *Strasburg*, 110 Pac. 1020 (Wash.), answered this question in the negative. The case appears to be quite unprecedented. The decision held that the statute in question [1] violated the provisions of the state constitution that, (1) "No person shall be deprived of life, liberty, or property without due process of law," [2] and (2), "The right to trial by jury shall remain inviolate." [3]

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have statutory regulations preventing the adoption of the rule. See GRAY, RESTRAINTS ON ALIENATION, 2 ed., § 280.

[10] See GRAY, RULE AGAINST PERPETUITIES, 2 ed., § 98; Edgerly *v.* Barker, 66 N. H. 434, 454.

[11] See Tillinghast *v.* Bradford, 5 R. I. 205, 212.

[12] Claflin *v.* Claflin, *supra*, 23.

[13] See GRAY, RESTRAINTS ON ALIENATION, 2 ed., § 124 *m*, *n*.

[14] See KALES, FUTURE INTERESTS, § 293.

[15] See 19 HARV. L. REV. 604; 20 *id.* 202; GRAY, RULE AGAINST PERPETUITIES, 2 ed., § 121 *i*.

[1] REMMINGTON & BALLINGER'S CODE, (Wash.) § 2259.

[2] WASH. CONST., Art. I, § 3.

[3] WASH. CONST., Art. I, § 21. There are similar provisions in practically all state constitutions. See STIMSON, FEDERAL AND STATE CONSTITUTIONS, 170–172.